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ಮಾನಸಗಂಗೋತ್ರಿ, ಮೈಸೂರು ೫೭೦ ೦೦೬

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YĀJÑAVALKYASMṚTIḤ-1

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ಡಾ. ಕುಳಂದೈಸ್ವಾಮಿ

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ಮಾನಸಗಂಗೋತ್ರಿ, ಮೈಸೂರು-೫೭೦ ೦೦೬

याज्ञवल्क्यस्मृतिः

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Further information on the Karnataka State Open University Programmes may obtained from the University's Office at Manasagangotri, Mysore - 6.

Printed and Published on behalf of Karnataka State Open University, Mysore-6 by Registrar (Administration).

प्रस्तावना

प्रियाः संस्कृतविद्यार्थिनः

अस्मदीयकर्णाटकराज्यमुक्तविश्वविद्यानिलयस्य स्नातकोत्तरशिक्षणविभागे अन्तिमवर्षस्य संस्कृतकक्ष्यां प्रवेष्टृभ्यः भवद्भ्यः सर्वेभ्यः हार्दं सुस्वागतं व्याहरामि।

जगतीतलस्य प्राचीनतमभाषासु अग्रिमपङ्क्तौ विराजमाना संस्कृतभाषा अद्वितीयत्वेन वर्तते। वैदिकसंस्कृतं लौकिकसंस्कृतमिति संस्कृतं द्विधा विभक्तमस्ति। क्रिस्तपूर्वकाले वेदेषु दृश्यमानेयं भाषा क्रिस्तपूर्वपञ्चमशतके काव्यस्वरूपमलभत इति विदग्धाः विद्वांसः वदन्ति। उत्तरोत्तरकाले संस्कृतभाषासौ उन्नतशिक्षण-शासन-लेखन-काव्यादिषु सततं समुपयुज्यमाना सती सर्वत्र व्याप्तासीत्। विश्वस्य प्राचीनतमभाषासु संस्कृतभाषैव प्रप्रथमां इति भाषाविदः विमर्शकाश्च कथयन्ति। प्रायः लोके पञ्चसहस्र-वर्षाधिकम् इतिहासं लब्धवती संस्कृतादन्या भाषा एकापि नास्ति।

चत्वारो वेदाः विविधानि शास्त्राणि रामायण-महाभारतनामकादीतिहासाः अष्टादशपुराणानि-उपपुराणानि षड्दर्शनानि अनेकानि काव्यानि शास्त्र-व्याख्यानानि प्रशस्तयः शासनानि चाटुपद्यानि सुभाषितानीत्येवं रीत्या विविधप्रकारेषु निबद्धाः कृतयः संस्कृतवाङ्मये भूरि विलसन्ति। एतेषां परिचयः पाठ्यक्रमानुरोधेन यथावकाशं कारयिष्यते। संस्कृते विशेषाध्ययनार्थं गहनतमसंशोधनार्थं च युष्माकं सज्जीकरणमेव स्नातकोत्तरशिक्षणस्य मुख्यः उद्देशः।

आसु अन्तिमवर्षस्य कक्ष्यासु यूयं वेदसूक्तानि उपनिषदं-भगवद्गीतां वैदिकसाहित्यचरित्रं कौटलीयम्-अर्थशास्त्रम् याज्ञवल्क्यस्मृतिं वाल्मीकिरामायणे सुन्दरकाण्डस्य कांश्चन सर्गान् प्रबन्धलेखनानि वैयाकरणसिद्धान्तकौमुद्यां समासप्रकरणं भाषाशास्त्रम् आनन्दवर्धनस्य ध्वन्यालोकं मम्मटस्य काव्यप्रकाशं प्राचीना-र्वाचीनालङ्कारिकाणां परिचयं भारतीय-पाश्चात्यसाहित्यविमर्शयोः तुलनात्मकमध्ययनं च करिष्यथ।

युष्माकं स्वाध्यायसुलभाय स्वयंबोधनपद्धत्या (SIM) उपर्युक्तविषयेषु पाठाः विशिष्टरूपेण विद्वद्भिः आरचितास्सन्ति। अनेके विद्वांसः एतान् पाठान् महता परिश्रमेण सज्जीकृतवन्तः तेषां साहाय्यं सकार्तज्ञं संस्मरामि।

यूयं सर्वे एतान् सम्यगधीत्य एतेषु विषयेषु विशिष्टं ज्ञानं सम्पादयत इत्याशासे। "श्रद्धंयाग्निः ज्ञानं समिध्यते" इति वेदवाण्यनुसारात् युष्माभिः श्रद्धाकृतमध्ययनं फलप्रदं यशःप्रदं च भूयादिति मदीयः आशयः। शुभं भवतु।

जीयात् गीर्वाणभारती

डा. एन्. राधाकृष्ण भट्
संस्कृतविभागाध्यक्षः
कर्णाटकराज्य-मुक्तविश्वविद्यानिलयः
मानसगङ्गोत्री, मैसूरु

Block Introduction and Objectives

In this block you will study the special type of literature called Smṛti literature called Smṛti literature with deals with the code of conduct etc. The first unit is meant for general introduction. The second unit deals with Smṛti literature - A survey of Smṛti literature is given here. The third chapter deals with the Yājñavalkyasmṛti - its author - date and comparitive study with Manusmṛti and the commentaries of Yājñavalkya Smṛti. The fourth unit deals in detail the contents of Yājñavalkya Smṛti

UNIT-1

Yājñavalkyasmṛti-1

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1.2. The Yajurveda
1.3. The Sāmaveda
1.4. The Atharaveda
1.5. The Brāhmanas
1.6. Vedāṅgas

UNIT-1

Yājñavalkyasmṛti-1

1.0 Introduction

Dear Students,

As a part of your syllabus, you are being introduced to the smṛti literature in general and Yājñavalkyasmṛti in particular. Though a small selected portion of the text is prescribed to serve the present purpose, you are supposed to have a bird's eye view of the entire text for the purpose of comprehensive knowledge. But the study of the smṛti text obviously necessitates you to search for the answers to the proper questions such as what is śruti? what type of literature it represents and what is its significance? It is desinged to deal with the following topics like - 1. the śruti literature, 2. the Smṛti texts and their significance, 3. the yājñavalkyasmṛti - author, date and works and 4. the Vyavahārādhyāya - a summary, in four units of the first block respectively. The second block consists of the prescribed text, translation and explanatory notes.

The expression śruti denotes a sphere of literature that has come down from the unknown past through the process of hearing and reciting. In ancient India, when there were no tools to write and read, the knowledge was transmitted from the teacher to the student orally, wherein the latter used to repeat the utterances of the former by way of hearing, memorising and reciting. The knowledge was transmitted to the later generations through this method.

This unique process of presentation was found no where in the world except in ancient India. As the 'hearing' is considered to be an important activity in the process, the knowledge acquired through the process is called śruti. This mental activity of atleast three thousand years expressed in speech is the history of the ancient Indian literature. The śruti is one of the synonyms of the veda.

The vedas are the earliest literary records of the civilization of ancient India. The tradition asserts that the Vedas are eternal, uncreated and without a beginning. They existed always and nothing could have preceeded then. The vedas are different expressions of the ultimate and absolute truth. It is also viewed that the vedas form the foundation of all knowledge and the source for every activity and every understanding in later times and they will continue so for ever too. They were not the product of any human endeavours (apauruṣeya) but they were revealed or flashed to certain seers (ṛṣis) in the transcendental state. They were called mantradraṣṭas (to whom the ṛks revealed themelves) but not mantrasraṣṭas (the creators of ṛks). Thus it is a revealed literature.

The term 'veda' is used in different contexts in different meanings. The primary meaning of the veda is 'a certain group of texts' and all the other meanings are secondary. These texts belong to different ages and are attributed to a large number of seers. Broadly speaking the entire literature has came into existence in two stages. The texts of the first stage are known as Mantras and Samhitas. A mantra is sacred passage to be recited. A samhia is a collection of such passages. The text are called so because they are to be recited continuously with the seperate words joined together according to some rules of euphomic combination. In contrast, if the words are seperated from each other it is called the texts of padapātha.

These texts are mainly classified into four groups. They are, 1. the Ṛgveda, 2. the Yajurveda, 3. the Sāmaveda and 4. the Atharvaveda. Each of them has different recensions, each such recension being called a śākhạ (branch). All such recensions put together come to over a thousand according to Indian tradition. But most of them have disappeared in the ravenge of time and only a few of them remain to our day.

1.1. The Ṛgveda

The term ṛk is derived from the root **arc** 'to worship'; in later Sanskrit there are terms like **arcana** (worship) and **arcaka** (worshipper). This text consists entirely of metrical passages, mostly in the form of prayers addressed to a large number of deities. There are a large number of deities worshipped in the Vedas. Some of them have the appearance of being personifications of the phenomena of Nature like the Sun, the Dawn, the Storm, the Wind, the Rivers etc. There are other portions which are of a philosophical nature like the conditions of the Universe prior to diversification and acquisition of fixed forms and functions. Some portion are of a secular nature like the description of a wedding procession and the wailings of a gambler.

The Ṛgveda contains about 10,450 verses (ṛks) in different metres and they are grouped into 1017 hymns (sūktas). The hymns are of unequal length. There are many short hymns with only three verses while there are very long hymns with even about 50 verses. These hymns are again grouped into ten books (Mandalas). The number of hymns in these books is also not equal. The first and the last contain 191 hymns each while the second book has only 43 hymns. The six maṇḍalas from the second to the seventh contain poems composed by or revealed to the seers respectively Gṛtsamada, Viśvāmitra, Vāmadeva, Atri, Bharadvāja and Vasiṣṭha or by the members of their families (gotras). This family affiliation is the principle underlying the grouping in this major portion of the collection. In the eighth maṇḍala, the first portion belongs to the sage Kaṇva or rather to the members of his family. The ninth maṇḍala consists entirely of hymns addressed to Soma, the plant, the juice of which is extracted and offered to the gods at the very elaborate rituals called the Somayāga attended with festivities. The first maṇḍala contain prayers addressed to various gods, most of whom do not appear in the 'family books'. In the tenth maṇḍala also there are various poets appearing, but what is peculair is that the hymns of this maṇḍala are of philosophical or of a secular nature.

The Ṛgveda is available only in a single recension, though it is said that there were five recensions in the ancient times.

1.2. The Yajurveda

The Yajurveda which mainly deals with the activities related to the performance of a sacrifice (Yajña), is available in two major recensions usually called Kṛṣṇayajurveda (Black) and the Śuklayajurveda (White). This Veda contains passages to be recited at the sacrifices, mainly those addressed to the various objects that are utilised in the sacrifices and at other rituals. For example, in procuring the milk that is needed at the ritual, they have to deal with the cows and the calves and a stick of seperate the calf from the cow and a rope to tie up the calf. In preparing the soma juice, they have to handle a mortar and pestle, or two stones, a sieve, vessels to collect the juice and so on. During the ritual they address short prose formulas to all such objects. Then there are short formulas that describe the various actions at the rituals like spreading the dough in a frying pan when they preparing the sacrificial cakes. All such actions are accompanied with the recitation of a short prose formula. Then the chief sacrificer has to instruct the collegues to do certain things during the ritual and such instructions are also given in the form of short prose formulas. The Yajurveda is mainly a collection of such formulas.

There are various explanations and interpretations, different theories and postulations, narration of stories - all relating to the rituals or elements connected with the rituals. In the Kṛṣṇayajurveda, both this kind of matter, the text and the explanations are mixed together, while in the Śuklayajurveda there are only the original texts.

This is the main distinction between the Black and the White recensions of the Yajurveda. It is said that because of their purity and admixture nature respectively in the two recensions that one is called white and the other black. The Kṛṣṇayajurveda is also known as the Taittiriya branch and the **śuklayajurveda** is known as **Vājasaneya** branch. There are three other branches called **Kāṭhaka**, the **Kapiṣṭhala** and the **Maitrāyaṇi** coming within the **Kṛṣṇayajurveda.**

1.3. The Sāmaveda

The third veda called the Sāmaveda is a book of songs. In form they do not differ from the prayer songs of the Ṛgveda and most of the material is taken from the Ṛgveda. Beside there are some independent portions also. This veda contains poems set to tunes and they are sung at the rituals. In the matter of describing the culture of the Vedas, this Veda has consequently little importance.

Out of numerous texts of Sāmaveda, which are said to be existed once, only three have come down to us. The best known of these is the recension of **Kauthumas** that consists of two parts, the **Ārcika** (the collection of stanzas) and the **Uttarārcika** (the second collection of stanzas). Both parts consist of verses all of which recur in the Ṛgveda. The text of the Sāmaveda is only a means to an end. The essential purpose of the both parts is to teach the melodies.

1.4. The Atharveda :

The Atharvaveda is a collection of 731 hymns that contain approximately 6000 verses and is divided into 20 books. The Atharvaveda is so called because, according to the tradition, this collection is related to the family of poets called the Atharvans, one of the most ancient families of poets in India with some sort of semi-divine status attached to them. This is mainly in the form of poetry but in the matter of content it is very different from the Ṛgveda. While the Ṛgveda is essentially a book of prayers to the various gods, the Atharvaveda contains matter that is essentially related to the actual life of the people. It contains a small portion in prose and some of the poems are addressed to the Gods. There are some poems that have a philosophical importance. There are also poems relating to Kings and their coronation and their reign and their battles and their victories. Other poems relate to agriculture and such vocations of the people. There is a very beautiful peom addressed to the Mother Earth.

The main content of the Atharvaveda relates to the cure of various ailments like jaundice, fever and consumption and skin diseases, and to secure a longlife, material prosperity and to such like matters closely related to the life of man. There is a mention of the application of medicines for curing the diseases and there is also indication of surgical operations.

These four together form the original text of the vedas called the **mantra** or **samhita** portion. Then there are explanatory portions known by the generic term

Brāhmaṇas. the word **Brāhmaṇa** means what relates to Brahman. Here the term **Brahman** is used not in the sense of the supreme truth that was acquired at a later stage but in the sense of 'sacred prayer' in the form of poems. All the four vedas mentioned above have their own Brāhmaṇas.

1.5. The Brāhmanas :

The Ṛgveda has its two **Brāhmaṇas** namely the **Aitareya** and the **Kauṣitakibrāhmaṇas** forming two seperate recensions. The **Kṛṣṇayajurveda** has the **Taittiriya brāhmaṇa.** The **Śuklayajurveda** has the **Satapatha brāhmaṇa.** The **Tāṇḍya brāhmaṇa** belongs to the **Sāmaveda** and the **Gopatha brahmaṇs** to the **Atharvaveda.** This does not exhaust the **Brāhmaṇas** but the above are most important among them. The **Brāhmaṇas** mentioned here deal with the ritualistic aspect of the original texts and it is this aspect that has come to be technically designated **Brāhmaṇas.**

There are further portions of the **Brahmaṇas,** known as the **Āranyakas** (forest treatises) which deal with certain discriptions to be observed and with certain kinds of rituals to be performed outside the home and in the garden. The upaniṣads form the third and final part of the **Brahmaṇas,** following the Āranyakas. Although the three sub-divisions together are known sometimes as **Brāhmaṇas,** it is only the first of the three that are popularly called by that name. Thus the **Aitareyabrāhmaṇa** of the **Ṛgveda** has the **Aitareya Araṇyaka** and **Aitareya upaniṣad.** The **Tsaittiriya brāhmaṇa** of **Kṛṣṇayajurveda** has the **Taittiriya**

Āraṇyaka and **Taittiriya upanisad**. All the vedas do not have an **Āraṇyaka** but there are **upaniṣads** attached to all the vedas. It is the original texts and their commentary portions together that form the **Vedas**, which are known by the term **śruti** literature.

1.6. Vedāṅgas :

There are various auxiliary texts that are necessary for understanding the **vedas** and for the performance of the rituals associated with the vedas. They are usually regarded as six fold tools. (ṣaḍaṅgas) : viz. **Śikṣā** (phonetics), **Vyākaraṇa** (Grammar), **Chandas** (Metrics), **Nirukta** (Etymology) **Jyotiṣa** (Astronomy) and **Kalpasutras** (Ritual Manuals). The last one is Kalpa is of three kinds. The Śrautasūtras, the **Gṛhyasūtras** and the **Dharma sūtras**. The **Śrautasūtras** deal exclusively with the religious rituals alone while the domestic rituals are dealt with in the Gṛhyasūtras. The laws governing the civic life are found in the **Dharma sūtras**. When the first two are directly based on the original texts of the vedas i.e., Samhitas and brāhmanas, the last one has no direct relation to the vedas but based on the customs traceable to the days of the vedas.

Many **Dharmasūtras** form part of the **kalpasūtras** and studied in distinct **sūtracaraṇas**. They presuppose the **Gṛhyasūtra** of the **Caraṇa** to which they belong. The **Dharmasūtras** belonging to all **sūtracaraṇas** have not come down to us. The **Āpastamba**, the **Hiranyakesin** and the **Baudhāyana Sūtracaranas** have a complete **Kalpa** tradition with its three components of **Śrauta, Gṛhya** and **Dharmasūtras**. As the **Dharmasūtras** are mostly concerned with rules about the conduct of men as members of the **āryan** community and do not deal with ritual of any kind, all **dharmasūtras** gradually became authoritative in all schools. A few of he important **Dharmasūtras** are : the **Gautamadharmasūtra**, the **Baudhāyana dharmasūtra**, the Āpastambadharmasūtra, the **Hiraṇyakeśidharmasūtra**, the Vasiṣtadharmasūtra, the Viṣṇdharmasūtra, the **Hārītadharmasūtra**, the **Saṅkhalikhitadharmasūtra** etc. Atri, Uṣanas, Kanva, Kāśyapa, Gārgya, Cyavana, Jātukarṇya, Devala, Paithīnasi, Budha, Bṛhaspati, Bhāradvāja, Śatātapa, Sumantu and others are being the other popular exponents of Dharmasūtras.

These treatises are the works of human beings written out of the memory. Because of this characteristic feature, the sphere of this latter literature is known as smṛti (remembered literature just opposite to the śruti (revealed).

The **Śruti** and **Smṛti** are the two beacon lights revealing our ancient heritage. The **Śruti** (the literature of revealation) is a greater authority than that of **Smṛti** (the literature of remembrance) and the latter is solely depended on the former. When the **Śruti** is **'apauruṣeya'** (not composed by any human being), **Smṛti** is composed by seers who were human beings but enlightened ones to guide the mankind in all walks of life.

The word **Smṛti** is used in two senses : In a wider sense, the smṛti is applied to all ancient orthodox, non-vedic works such as Pāṇini's Grammar, to the **śrauta**,

gṛhya and **dharmasūtras**, to the **Mahābhārata**, to **Manu**, **Yājñavalkya** and others. In a narrower sense smṛti is used to refer only **dharmasūtras** and have become synonyms later. While the wider sense includes the works that are opposed to and beyond the pale of the veda, the narrower carefully elucidates that the **smṛti** means a work that is not opposed to the veda or that does not treat the veda as not authoritative and treats of **varṇa, jāti, āśrama** and cognate topics. Thus it is clear that smṛtis are nothing but **Dharmasūtras** as they mirrored the beliefs and practices of people and influenced both elite as well as ordinary men. The points that distinguish the **Dharmasūtras** from the **Smṛtis** are : 1. When the authors of **Dharmasūtras** do not claim to be inspired seers or super human beings, the authors of **Smṛtis** like **Manu** and **Yājñavalkya** ascribe to gods like Brahma. 2. The Dharmasūtras are in prose or in mixed prose and verse, while the **Smṛtis** are in verse and 3. The **Dharmasūtras** do not proceed upon any orderly arrangement of topics, while the **Smṛtis** arrange their contents and treat the subjects under three principal heads viz., **ācāra, vyavahāra** and **prāyaścitta.**

The word **dharma**, the theme and soul of **Smṛtis**, is a more complicated expression. It is one of those sanskrit words that defy all attempts at an exact rendering in English or any other tongue. It has passed through several stages. Starting from the **Vedas**, till to the days of **Dharmaśastras** many have attempted to define it . Ultimately their efforts have synchronised in saying that dharma is the previleges, duties and obligations of a man, his standard of conduct as a member of the **āryan** community, as a member of one of the castes, as a person in a particular stage of life. It is in this sense the well known exhortation to the people like - **'satyam vada dharmam cara'** 'svadharme nidhanam śreyaḥ' etc are used in the upaniṣads and the Bhagavadgita respectively. The word 'dharma' is employed in this connotation in the Dharmaśastras in general and in the Yājñavalkyasmṛti in particular.

The dharma is, in superficial sense, used as a synonym of law in modern terms. It is an expression of wide import and comes to mean the aggregate of duties and obligations of religious, social, legal, political and ethical. In a system of life necessarily influenced by theological tenets and philosophical theories, the genius of Indian seers formulated social and sociological concepts found in the vedic tradition. The Hindu law is nothing but the ancient law rooted in the vedas. It is not only based on the mere scriptures, but also depend on the customs of the people. The importance attached to the law-creating efficacy of custom in ancient Hindu jurisprudence was so great that the exponents of law were unanimous in accepting custom as a constituent part of the law. Thus the veda, traditional lore, the usages of good men, what is agreeable to one's self and desire born of due deliberation are traditionally recognised as the source of dharma.

The authors of Dharmaśāstras declared and imphasised the divine origin and sanction of the rules of dharma. Dharma is considered the King of Kings far more effective in operation and rigid than the King. In short nothing can be mightier than dharma (law), with the help of which even the weak may prevail over the strong. The laws laid down in the Dharmaśāstras are not merely to guide individuals and communities in their day today life but also to guide the kings in all their minute essentials. It is primary duty of the King to uphold Dharma and he is very much governed by it as any other person is expected to be. It is only in this sense the statement - 'yathā rājā thathā prajā' will have to be understood. It is for this reason the King is considered the first citizen of the state. It is to be kept in mind that the King was never considered as a Law-maker but an authority to enforce law. The sabhas and pariṣads are the technical assemblies, where the legal disputations, along with philosophical discussions have been held and become responsible for the rise and development of schools of philosophy, principles of reasoning and the practice of the art of discussion.

The Smṛtis otherwise called Dharmaśāstras form the earliest extant treatises from which the Hindu law is derived. They are, indeed, the collections of practices handed down to posterity by the sages of antiquity. They are composite in character and blend of religious, moral, social and legal duties. Ethico-religious obligations are considered very important by the exponents of dharma much more than the legal obligations. The Smṛtis enounce rules and precepts of dharma in a broad and comprehensive sense. The philosophy of the Hindu way of life that emphasises on the supremacy of inward life over external things obviously lead the Smṛtikaras to mould the law in the frame of religion and ethics. Inspite of that there are some Smṛtis which illustrate and make a distinction between law and morality applicable to the issues where it felt necessary to insist upon any such point of distinction.

NOTES :

UNIT - 2
Smṛtis

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2.1. Introduction

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2.10 Self Check Questions

UNIT - 2

Smṛtis

2.1 Introduction

The subject matter of the **Smṛtis** is generally divided into three components namely **Ācāra, Vyavahāra** and **Prāyaścitta**. The first and the last components deal with the rules governing religious observances and expiation rites respectively. The early writers laid stress much on those rules rather than on rules of vyavahāra i.e., of civil law. The later **smṛtikaras** have treated **vyavahāra** in seperate sections and exhaustively considered rules of positive law. **Nārada** and such other **Smṛtikaras** have compiled rules only of **vyavahāra** suitable to the courts of justice and to cover private acts and disputes.

The practical insight of sages of antiquity have left very little that was not covered. It becomes clear when we find that at that remote period, the law was treated under eighteen heads with one hundred and thirty two sub-divisions laying down rules of law both substantially and objectively.

The extant **Smṛtis** were though formulated at different times and in different parts of the country, they all voted for one traditional law. There was no dogmatic insistance on any fundamental motion. What was accepted was the rule binding motion of what ought to be done as agreeable to good conscience and in conformity with the cherished article of belief. Time and again the **Smṛtikaras** assert that.

the sanction behind **dharma** was neither the will of any supreme temporal power nor any soverign power. They never arrogate themselves as law-makers but only claimed to be the exponents of the divine precepts of law and compilers of traditions handed down to them. They clung to the same position even when they introduced certain changes and reforms.

The gradual increase of **smṛti** texts indicate the importance of the texts as well as their spirit of accommodation of the reforms or changes required by the contemporary society. In ancient times the number of **Smṛtis** are very small. **Gautama** speaks of only **Manu** but none else. **Baudhāyana** besides himself names seven authors on **dharma** viz. Aupajarighani, Kātya, Kāśyapa, Gautama, Prajāpati, Maudgalya and Hārīta. Vasiṣṭha enumerates only five namely : Gautama, Prajāpati, Manu, Yama and Hārīta. Manu speaks of only six besides himself viz., Atri, the son of Utathya, Bhṛgu, Vasiṣṭha, Vaikhānasa and Śaunaka. Aāpastamba mentions a large number viz., ten, some of whom like Eka, kuṇika and Puṣkarasādi are more than mere names to us. But in all these authors and works are mentioned only casually and there is no regular enumeration or list of writers on dharma in one place. Aparārka in his commentary on the Gautama **dharmasūtra** makes a reference to sixteen authors of Dharmasūtras including himself. Probably Yājñavalkya is the earliest writer, who enumerated in one place twenty expounders of dharma, counting Śankha and Likhita as two distinct persons. Parāśara gives a list of nineteen expounders of **dharma**, while kumārila speaks of eighteen

Dharmasamhitas. Paiṭhīnasi enumerates thirty six smṛtis. Aparārka says that the Bhaviṣyapurāna refers to thirty six smṛtis and his enumeration of them is slightly different from that of Paiṭhīnasi. The Vṛddhagautama smṛti gives a list of fifty seven Dharma śāstras. The Prayogapārijāta enumerates 18 principal smṛtis, 18 upa smṛtis and 21 other smṛtikaras. If the number of smṛtis refered by the later works like the **Nirṇayasindhu**, the **Mayūkhas** of Nīlakaṇtha taken in to account, the number of **smṛtis** will be found to be about a hundred.

The **smṛtis** are the products of different and widely seperated ages. Some of them are entirely in prose or in mixed prose and verse, while the large majority are in verse. A few of them are very ancient and were composed centuries before the christian era, such as the **Dharmasūtras** of Gautama, Āpastamba, Bandhāyana and the Manusmṛti. Some were composed in the first centuries of the Christian era such as the **smṛtis** of Yājñavalkya, Parāśara, Nārada. Most of the Smṛtis other than the above fall between the period from 400 AD to 1000 AD. The chronology of these **smṛtis** presents perflexing problems. Some of the metrical smṛtis are remodellings of older sūtras. There are two or three different **smṛtis** going under the same name. The sectarian zeal has richly contributed to the existing confusion in certain cases. There are several works going under the names of well-known **smṛtikaras** with the prefixes **Vṛddha, Bṛhat, Laghu, Madhyama.**

As most of the writers quote from memory and had recourse to manuscripts, even well known verses are acribed to different authors in different works. An attempt will be made to introduce some of the leading versified **smṛtis** in chronological order beginning from the **Manusmṛti** except the Yajñavalkya, which is reserved for the third unit.

2.2. MANUSMṚTI

Manu is regarded in the early literature as the father of the human race. He became King by his disciplined behaviour. There are twelve Manus of different ages but the extant **Manusmṛti** is attributed to Svāyambhuva Manu. The text is divided into twelve chapters (adhyayas) and contains 2694 slokas. The **Manusmṛti** is written in a simple and flowing style. The contents of the Manusmṛti are as follows : The creation of Universe, Manus, Yugas, four-fold classification and a brief summary of the entire work is found in the first chapter. The definition of **dharma**, the **sources of dharma**, the boundaries of the continent and **samskaras** are dealt with in the second chapter. The types of marriages responsibilities of an house-holder, the **śrāddhas**, mode of life and means of subsistance, taboos, prohibitions, purificator acts, duties of widows, are contained in the following three chapters. The life of renunciation is found in the sixth chapter. The chapters seven to twelve are ear marked to relate different aspects of the King and his administration of the state. Many related topics are dealt with in between.

The evidences both external and internal show that the extant Manusmṛti could have been composed between 2nd century BC and 2nd century AD. The prominent commentators on Manusmṛti are - Medhatithi, Govindaraja, Kullūka, Nārāyana, Raghavānanda, Nandana, Rāmacandra etc.

2.3. The Rāmāyaṇa and the Mahābhārata

The great epics of India, the Ramayana and the Mahābhārata contain numerous passages bearing on many topics of Dharmaśastra and are relied upon as authoritativa in medieval and later works. The Mahābharatha itself claims that vyāsa composed the work as a great Dharmaśāstra, as Arthaśāstra, Mokṣaśāstra and also Kāmaśāstra. As these works have been dealt with in detail in the classical literature, it is not proper to repeat again here.

2.4. The Parāśarasmṛti

The Parāśarasmṛti must have been an ancient one as the Yājñavalkyasmṛti mentions its author as one of the ancient writers on **dharma**. But it is doubtful whether the present text is the genuine work of Parāśara. The extant **smṛti** is probably a recast of it as it mentions the **Yājñavalkyasmṛti** in the first chapter. The **Parāśarasmṛti** is divided into twelve chapters and contains only 592 verses. It deals with only ācāra and prāyaścitta portions in the first four and later seven chapters respectively.

Parāśara contains several peculiar views in respect of four kinds of sons, the practice of sati etc. There is an extensive work called **Bṛhatpārāśara** samhitā, which is divided into twelve chapters with 3300 verses in total.

2.5. The Nāradasmṛti

Nārada is a very ancient name and he figures frequently as a sage in the Mahābhārata. As Nārada is not mentioned either by Yājñavalkya or by Parāśara, it may be assumed that he belongs to the later period. The Nāradasmṛti follows the Manusmṛti in many aspects and equally differs in some aspects.

The printed Nāradasmṛti contains three introductory chapters on the principles of judicial procedure (vyavahāramātṛka) and on the judicial assembly (sabhā). Then the titles of law are dealt with one after another starting with the ṛṇādāna and ending with prakīrṇaka. A few verses on the theft are found in the Appendix. The text contains 1028 verses including 61 verses on theft in the appendix. There are two commentaries on the vārada namely Asahāya and Bhavaswamin. It appears that there are some related works like Jyotirnārada, Bṛhannārada and Laghunārada.

2.6. Bṛhaspatismṛti

Bṛhaspati was an ancient teacher of **Arthaśāstra** follows from the Kauṭilīya, wherein the Bārhaspatyas are cited six times. In the Mahābhārata it is said that Bṛhaspati has compressed into 3000 chapters. The work on Dharma, Artha and Kāma composed by Brahma. It cannot be determined that whether both the works on Arthaśāstra and Dharmaśāstra are composed by same Bṛhaspati or different. It looks probable that they were composed by different authors. Refering Bṛhaspati's work on Dharmaśāstra, Yājñavalkya mentions Bṛhaspati as one among the expounders of Dharma.

The complete text of **Bṛhaspatismṛti** has not yet been discovered. It will be, when discovered, a very precious monument of ancient India's legal principles and definitions. Bṛhaspati was the first jurist to make a clear distinction between civil and criminal justice.

Bṛhaspati closely follows the extant **Manusmṛti** in the lacomic treatment of Manu. When Nārada departs from Manu, Bṛhaspati follows the latter very closely. But he too differes on some points from Manu. Though it is difficult to state the exact relationship to Narada, it is clear that Bṛaspati certainly later than Manu and Yājñavalkya. As he knew the extant Manusmṛti, Bṛhaspati must have flourished between 200 and 400 AD. From the quotations of the commentators on other Smṛtis, it appears that there is an extensive work on it namely Vṛddha Bṛhaspati.

2.7. Kātyāyanasmṛti

Nārada, Bṛhaspati and Kātyāyana form a triumvirate in the realm of the ancient Hindu law and procedure. The work of Kātyāyana of Vyavahāra like that of Bṛhaspati, has yet to be recovered. A collection of Kātyayana's verses gathered from quotations about one thousand verses is published. Kātyāyana appears to have taken Nārada and Bṛhaspati as his models in the order and treatment of the subjects in terminology and technique to be dealt with on Vyāvahāra. He had the same advanced views about law and rules of procedure as found in the Nārada and Bṛhaspati.

The date of Kātyāyana can be settled only approximately. He is certainly much later than Manu and Yājñavalkya. As he presupposes Nārada and Bṛhaspati as leading authority on vyavahāra, his upper limit is the 3rd or 4th century AD. As it requires at least a hundred years to attain a position of authority on par with Nārada and Bṛhaspati, the lowest limit to which Kātyayana can be assigned in the 6th century. Hence it may be said that Kātyāyana flourished between 4th and 6th century AD.

2.8. Dakṣasmṛti

Dakṣa is one of the writers on dharma enumarated by Yājñavalkya. He was quoted by all the commentators like Viśvarūpa, Mitākṣara, Aparārka. The Dakṣasmṛti in seven chapters and 220 verses. The principal subjects treated of are : Four āśramas, two kinds of brahmacārins, the daily round of duties for dvijas, nine vikarmans, nine actions, that should be concealed, nine acts that should be made public, nine things that should not be gifted; gifts; ecology of a good housewife; śauca of two kinds; impurity due to birth and death; yoga and its six aṅgas; duties of bhikṣu, dvaita and advaita. The Dakṣasmṛti contains the name of Dakṣa and shows that he was a thorough-going advaitin. This Smṛti is certainly a very old one.

2.9. Aṅgirasasmṛti

Aṅgiras is one of the ten primordial sages mentioned in Manusmṛti. It is a very ancient name even in the Ṛgveda. There are three extant texts of the same Smṛti. The Aṅgirasasmṛti, publishes in Jivānanda part I pp. 554-560, contains only 72 verses. Probably it may be an abridgement of the original one. It lays down prāyaścittas for various occasions such as taking food and drink from antyajas, for cruelly beating or causing various injuries to cows. It cites Aṅgiras and Āpastamba by name. The Aṅgirasasmṛti, published by Ānandāśrama series, consists of 168 verses. At the beginning it is said that when asked by Bhāradvāja and others, Aṅgiras declared the Smṛti dealing with rules of **prāyaścitta**. It names the following **Smṛtikāras** viz. Śankhalikhita, Sumantu, Āpastamba, Manu, Aṅgiras. The Adyar Library has brought out a Aṅgirasasmṛti which is different from the preceeding two works and contains over 1200 ṣlokas. The commentators refers to a Madhyaya Aṅgīrasa several times but the text is not available.

Apart from these there are some Smṛtis known by name only such as Ṛsyasṛinga, Kāṣnājini, Pitāmaha, Pulastya, Paithīnasi, Prācetas, Prajāpati, Marīci, Yamā, Laugaksī, Visvāmitra, Vyāsa. Later on an attempt was also made to prepare the collections of **Smṛti** texts. For instance **Caturviṁaśatimata, Ṣaṭtrimśanmata, Smṛticandrika, Smṛtisangraha** etc. These Smṛti text were commented upon by many scholars with their own pen names. Among these Asahāya, Bhartṛyajña, Viśvarūpa, Bhāruci, Srikara, Medhatithi, Kullūka etc are very popular.

2.10 Self Check Questions

1. Write an essay on śrusti and smṛte?
2. What is the subject matter of smṛte & explain?
3. Bring out some important smṛtis?

NOTES :

UNIT-III
THE YĀJÑAVALKYASMṚTI

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3.2 THE YĀJNAVALKYASMṚTI - AND ITS AUTHOR

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UNIT-III

THE YĀJÑAVALKYASMṚTI

3.1 Introduction

The name Yājñavalkya, is one of the most illustrious among Vedic sages. He is credited with having promulgated the white Yajurveda. The Mahābhārata (Śāntiparva) refers to a rupture of Yajñavalkya with his preceptor Vaiśampāyana. Yājñavalkya, by worshipping the Sun, has recieved the revelation of the white Yajurveda, the Satapatha brahmana etc. in the form of a horse. The accounts found in the Viṣṇupurāṇa (3.5), the Bhāgavatapurāṇa (XĪ. 6.61-74) and other purāṇas differ some what from the episode of the Mahābhārata. But all are agree on the fact of the strained relations between Yajñavalkya and his teacher. Whether the incident is real or not, it speaks that the sage was of courageous nature and opposes any one who ever he may be, found defective.

It is true that he is an highly learned man and a lover of disputation. The Śatapatha Brāhmaṇa (XI.6.2) in several places alludes to the dialogue of Yajñavalkya and the King Janaka of Videha on agnihotra. In the Bṛhadāraṇyaka upaniṣad, Yājñavalkya appears as a great philosopher teaching philosophical doctrines of Brahman and immortality. He represents as carrying away the one thousand cows set apart by Janaka for the most learned brāhmaṇa. He is said to have imparted to Janaka the knowledge of destiny of the soul after it is released from the bands of flesh and worldly affections. He is most brilliant of his times and almost a final authority on all doctrinal matters. He had two wives-Maitreyi and Kalyani. When he blessed the philosophical minded Maitreyi with the knowledge of Brahman the other wife was left with mundane property.

3.2 THE YĀJNAVALKYASMṚTI-AND ITS AUTHOR

The Yajñavalkyasmṛti itself records that it was written by Yajñavalkya to whom the authorship of Ārṇyaka is ascribed. He is also credited with a work on the Yogaśāstra. The legendary account given in the introductory portion of the text is only glorify the Yājñavalkyasmṛti as the work of a great and ancient sage, philosopher and Yogin. From the style and the doctrines of the Smṛti, it is not possible to believe that the author of Yajñavalkyasmṛti are one and the same. A Smṛti can not be expected from a person who has given to the world the Upaniṣad that contains the boldest philosophical speculations in the simplest and most effective language. The whole of the Yājñavalkyasmṛti is written in the classical anuṣṭubh metre. Though the author's aim is to concise his verses are not obscure. The style is lucid and direct. Even the orthodox Indian opinion is not prepared to admit the identity of the authroship in the case of the Āraṇyaka and the Smṛti. Vijñānesvara, a commentator on the Yājñavalkyasmṛti says in the very beginning of the commentary that some pupil of Yajñavalkya abridged the Dharmaśāstra in the form of a dialogue. Thus the promulgator of Āraṇyaka and the author of the Yājñavalkyasmṛti are two different persons of different ages. However, the Yājñavalkyasmṛti stands in a very intimate relation to the white Yajurveda and the literature that clusters round it.

The other work acribed to the sage Yajñavalkya is the Yoga-Yājñavalkya. The Yoga-Yājñavalkya is a small work of twelve chapters, wherein the sage Yājñavalkya imparts the essence of Yoga together with its eight angas to Maitreyi and Gargi on their request. It has little to do with the Dharmasāstra. Besides the Yoga-Yajñavalkyà there are some works named after the sage like Vṛddha-Yājñavalkya and Bṛhad-Yājñavalkya. Though the later two are abridged editions of Dharmaśāstras, they can not be attributed to the sage Yājñavalkya on the basis of the content and style.

3.3. THE DATE OF YĀJÑAVALKYASMṚTI

With regard to the possible date of the Yājñavalkyasmṛti, one need not consider the evidence lower than the 9th century AD. Because Viśvarūpa, who has commented upon the Yājñavalkyasmṛti, is said to have lived during the first quarter of ninth century AD. He must be seperated from the author of the Smṛti by many centuries follows from several considerations. When he has written his commentary on the Yājñavalkyasmṛti, he had not only numerous readings of the text but also has various interpretations of the some words and verses. Prof.Kane establishes with the support of many convincing external as well as internal evidences that Viśvarūpa had before him many commentaries on the Yājñavalkyasmṛti. Viśvarūpa himself states that he is not going to give any scholastic interpretations himself.

The Narada and Brhaspati, have recorded advanced ideas in juristic principles and with exactitude than the Yajñavalkyasmṛti. As these authors are placed not later than 500 AD, the author of the Yajñavalkyasmṛti, must have been floursihed two or three centuries earlier still. It is also evident that the Yājñvalkyasmṛti follows the Manusmṛti and the Arthaśāstra of Kauṭilya on many issues. As such there is nothing prevent one to hold that the extant Yājñavalkyasmṛti was composed between the first century BC and the second century AD.

The Yājñavalkyasmṛti consists of 1010 verses. A slight variation in the number of total verses of the text is found in the commentaries on the text. When Visvarūpa's Bālakrīḍā records 1003 verses, Vijñāneśvara's Mitākṣara contains 1006 verses. The variation is found not only in the number of verses but also in the arrangement of verses and readings adopted by the commentators. The Agnipurāṇa, that represents a text midway between the two commentators (i.e. Visvarūpa of the 9th century and Vijñāneśvara of 11th century AD) affords an excellent check for the consideration of the text of he Yājñavalkyasmṛti. The Garuḍapurāṇa (Ch.93) expressively states that the dharma promulgated by Yājñavalkya represents a text between Visvarūpa and Vijñānesvara. So the present text of the Smṛti is mainly the same from 700AD.

3.4 YĀJÑAVALKYA AND MANUSMṚTI

A comparison of the Yājñavalkyasmṛti with Manusmṛti shows a close agreement in phraseology between the two and the former usually trying to compress the latter's dicta. The style of the Yājñavalkyasmṛti is flowing and direct and its verses being hardly ever obscure. The entire text is written in the classical anuṣṭubh metre and there being not many un-Paṇinian expressions. The Yājñavalkyasmṛti represents a more advanced state of thought and differs from the Manusmṛti on several points for instance - Manu allows a brāhmin to marry a sūdra girl whereas Yājñavalkya does not do so. When Manu condemns niyoga, Yājñavalkya allows it. Manu finds fault with gambling but Yājñavalkya does not.

3.5. YĀJÑAVAVALKYASMṚTI–ITS COMMENTARIES

Many commentaries were written on the Yājñavalkyasmṛti of which the following four have so far been discovered and published.

3.5.1. The commentary entitled 'Bālakridā' literally meaning 'child's play' is written by Visvarūpa. It is the most difficult, voluminous work and hard nut to crack. It is a fine example of superb skill in the interpretation and reconciliation of apparently conflicting texts. Though Visvarūpa is a master of Pūrvamīmāmsā, his philosophical views seem to have been identical with those of great Śankarācarya. He was flourished about 800-825AD. Prof.P.V.Kane establishes that Viśvarūpa is identical with Sureśvara. Sureśvara is the name of the Visvarūpa after he became a sannyasin. The identity is evident by the writing of great scholars like Mādhavācarya.

3.5.2. Vajñāneśvara has composed a commentary namely Mitākṣara on the Yājñavalkyasmṛti. The Mitākṣara occupies a unique place in the Dharmaśāstra literature. Its position is analogous to that of the Mahābhāsya of Patañjali in grammar or to that of the Kāvyaprakāśa of Mammaṭa in poetics. The Mitākṣara is not only a commentary explaining the verses of Yājñavalkya, but it is of the nature of a digest of Smṛti material. Like Bālakrīḍā the Mitākṣara is also a misnomer. Because though the meaning of the name is 'a concise commentary of limited letters', it is indeed amitakṣara that is 'a commentary of unlimited dimensions' in its presentation.

As Vijñanesvara refers, to the works of Viśvarūpa, Medhatithi and Dhareśvara, he must have been composed his commentary after 1050AD. Since the Smṛticandrikā of 1200AD criticises the views of Mitākṣara, Prof.P.V.Kane opines that Vijñāneśvara must have begun and completed that commentary between 1100-1120AD. As Vijñāneśvara eulogises the realm of Vikramāditya of Kalyāṇa (1126AD), he must be a native of Karnataka.

3.5.3. Another voluminous commentary on the Yājñavalkyasmṛti is Aparārka. The introductory verses and the colophon clearly state that the author of the commentary is Aparāditya, a Śilāhara King born in the family of Jimūtavāhana of the Vidyadhara race, who ruled the region between Goa and present Mysore. It appears that according to Prof. Kane, Aparādityadeva I, who is associated with the grants of Somanatha Pathan of Kathiawar (1115-1130AD), must have composed the Aparārka on the Yajñavalkyasmṛti in the first half of the 12th century. The Aparарka is nearly double of Mitākṣara in the size.

3.5.4. The most concise commentary on the Yājñavalkyasmṛti is the Dipakalikā of Sūlapāni, one of the three eminent writers on Dharma śāstras from Bengal. As Sūlapani refers by name Ratnakara of Caṇḍeśvara of 1365 AD and his work was commented by Govindananda of 1460 AD, he must be flourished between 1365 and 1445 AD.

UNIT - IV

THE SUBJECT MATTER OF THE YĀJÑAVALKYASMṚTI

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UNIT - IV

THE SUBJECT MATTER OF THE YĀJÑAVALKYASMṚTI

4.1. INTRODUCTION

Following the classification of topics dealt with in the Smṛti texts, the Yājñavalkyasmṛti, too concisely presents its subject matter under the sections namely ācāra (custom), vyavahāra (law proper) and prāyaścitta (expiation) each divided into various chapters. The entire text is in the form of a narration by the sage Yājñavalkya, when a group of sages approached him at Mithila and requested to impart the dharmas of the varṇas, āśramas and others.

The first section entitled ācārādhyāya consists of thirteen chapters. The topics dealt with in it are - the fourteen vidyas, sources of dharma, the samskāras from garbhādhāna to marriage, the four-fold classification of society, their avocations and duties, the duties of a householder, the duties of a snātaka, rules about prohibited and allowed food and drink, purification of various materials, the nature of gifts and rewards, the eligibility to give and to accept those gifts and rewards, the highest gift, the nature and varieties of Śrāddhas and its elaborate procedure and the items required by it; propitiatory ceremonies as regards Vināyaka and the nine grahas (planets) and finally the rājadharma. The rājadharma deals with the qualifications of a King, his ministers, purohitas, royal edicts, King's duties of protection, administration of justice, taxation and expenditure, constitution of maṇdalas, the four expedients, the six guṇas, fate, human effort, impartiality in punishment, units of measure and weight, grades of fine, different kinds of punishment etc.

The third section known as Prāyaścitta, in twenty one chapters, deals with the nature and varieties of aśauca, the rules of conduct and livelihood in distress, the rules for a forest hermit, the rules for a yati, the constitution of a physical body and its sojourn after death, the nature of atman and its immortality, the heaven and hell, the various diseases from which sinners suffer, the purpose of expiations, the five mortal sins and other similar acts, upapātakas, 21 hells, expiation for murdering a brāhmana and cows, for drinking wine, for stealing gold, for having association with other sinners, greater or lesser expiation according to fine, place, age, ability, ostracising the non-conformist sinner, secret expiations, the ten Yamas and Niyamas, Vratas, mahāsantarpana, cāndrāyaṇa and the reward for reading the smṛti.

In the second section i.e., Vyavahārādhyāya there are as many as twentyone prakaraṇas. As it is proposed to present the subject matter of the first six chapters which is prescribed for the students of Post Graduation and is to be with indetail, the contents of the rest of the prakaraṇas i.e., from 7th to 25th, are refered here as follows. General rules of procedure in ordeals of balance, water, fire, poison, kośa, rice, are explained in the seventh chapter. The topics related partition are the subject matter of eighth chapter.

The boundary disputes and the disputes between the master and herdsman, the sale without ownersip, invalidity of gifts, recision of sale, breach of contract of service; slavery by force, violation of conventions; non-payment of wages, gambling and betting, abuse, defamation and slander, assault, hurt etc., sāhas, partnership, theft, adultery, miscellaneous wrongs, review of judgement are elucidated in these chapters.

4.2. साधारणव्यवहारमातृकाप्रकरणम् ॥ 1 ॥

General rules of procedure

The institution of monarchy is one of the past glory to be cherished in memory and it has become almost extinct in the whole world. The question that is being asked now-a-days is what is the purpose of studying smṛti texts which are said to have no relevance. But the students of socio-political philosophy can never afford to undermine the importance of the study of smṛti literature because of their significant contribution of fundamental concepts to the modern socio-political and legal institutions. The Mitākṣarakāra clarifies that this smṛti portions are not merely intended to the King (kṣatriya) but as a matter of fact it applies to any person who is at the helm of affairs of administration.

The protection of the people forms the fundamental and primary duty of a ruler Possessing the necessary qualification. The protection of people is not possible without punishing the wicked. When once the wicked beings are vanquished (duṣṭanigraha), theprotection of the noble (śiṣṭharakṣaṇa) would be easier. The nature of the wicked persons could be ascertained only by a thorough knowledge of their actions and activities along with the nature of punishment (daṇḍa) that is to be inflected on them. Yājñavalkya, in the first chapter of the section, presents his views on positive law (vyavahāra) dealing with the rules of procedure in general at the outset.

In order to discharge the highest duty of protecting noble and punishing wicked, the King has to attend personally to the administration of justice everyday surrounded by his councillors. The King, at the out, must be free from anger and greed and should take the help of Brāhmaṇas, who have studied the vedas and well versed in the Dharma śāstras. The established usage and the law of the country form part of the subject matter of Dharmaśaṣtras in so far as they are not inconsistent with it.

Any political authority is expected to take the cousel of experts in the matter both in theory and practice so that the political authority need not subsequently feel apologetic for wrong decisions. It is with this perspective, Manu (VĪ.128) says that great infamy becomes accrued to the King in case he punishes a wrong person or if a culprit is let scotfree. Hence he has to closely follow the tenets propounded in the Dharmaśāstras. While clearing the suits in the court.

The suit (vyavahāra) can arise between two persons involved in a transaction in conflict with one another in their dealings. As for example - where a certain person says that a particular land belongs to him and the other person contradicts it and claims the same land as his own. The term vyavahāra which is technically used in legal science, is to be understood as a refined, cultured and educated. The King is expected to arrive at a conclusion taking into consideration the opinion of the councillors.

The smṛtis in order to prevent the administrative authority from becoming despots have ordained that the King should select his councillors possessing worthy qualifications such as high learning, proficiency in Dharmasastras and maintain truthfulness. They shall accord equal disposition towards a friend and a foe in administering a verdict. There is some divergence regarding the number of councillors. Manu and Katyayana are said to have stipulated the nubmer as three. According to Bṛhaspati the number may vary from seven to three. But all Smṛtikāras are unanimous in insisting that the councillors shall prevail upon the King to maintain truthfulness and judiciousness. The councillors need not be the brāhmaṇas. Kātyāyana distinguishes brāhmaṇas from the councillors. According to him the brāhmaṇas are not appointed (aniyukta), while the councillors are appointed (niyukta). The appointed i.e., councillors should advise the King on the facts as they stand and if he would act otherwise then they should dissuade him. If they do not act properly they would be guilty. Of the unappointed (brāhmaṇas) the sin occurs only when they speak a falsehood or do not speak at all and when they do not dissuade the King. He also suggests that the court should consist of a few merchants of food family, free from malice and possessing the qualifications of high birth, character, age, good behaviour and affluence and family traditions.

The office of the administration of justice or court is such that it requires constant attention. If the King is not able to attend to the work personally being preoccupied, he should depute a brāhmaṇa who is conversant with all laws and customs to look into the matter along with the councillors. Kātyāyana says that brāhmaṇa so deputed should be self-restrained, must be illustrious birth, maintain impartiality and should not become affected by emotional upsurges. He must be calm, god-fearing, religious by temperments and free from anger. It is also mentioned that the King may appoint a kṣatriya or a vaiśya in the absence of a brāhmaṇa of the above description. A śūdra is to be avoided by all means to be a chief judge.

The King shall pay heed to the opinion of the chief judge, who is termed as prāḍvivāka, even in case he differed from him in views. Prāṭ is the person who defends and puts the questions to the plaintiff. He, who sits on judgement over the statement differentiating inconsistent from consistent is a vivāka. And also as the King has to consult the judge before passing his verdict, the latter is called prāḍvivāka.

In case the judge and his councillors were to take any decision that is not compatible with the ones found in the Dharmasastras, the Yajnavalkya is of the opinion that the judge and councillors each one severally are liable for punishment with a fine double the fine involved in the dispute. It is made clear that the members are to be punished with double the fine accuring as damages on account of a defeat in the suit, but not of the amount which is the subject matter of dispute. The same fine is prescribed when the decision is taken out of a passion, avarice or fear and in each case a seperte fine is to be levied. It is a surprise that Smṛtikaras, have identified that the judgement are bound to be influenced by the passion, avarice and fear and would not restore justice to any party. Hence Yājñavalkya has stripulated such times for those judges.

If anyone who suffers from such injustice brings such a foul judgement to the notice of the King, there arises provision for a judicial proceeding (vyavahāra). The judicial proceeding consists of component parts like, the plaint (pratijña), the reply (uttara), doubt (samśaya), reason (hetu), deductions (parāmarśa), evidence (pramāṇa), decision (nirṇaya) and reason (prayojana) thereof. Such a judicial proceeding or plaint is of two kinds viz. plaint based on suspicion (śaṅkābhiyoga) and plaint based on facts (tattvābhiyoga) when the sankhābhiyoga takes place in consequence of defendant's association with bad company and the tattvābhiyoga is that when the stolen goods have come to light with a person. The stolen goods is termed as 'hodhā'. Again the tattvābhiyoga is of two varieties viz. (1) containing the statement of a denial and (2) containing the statement of a wrong thing by the defendant.

The vyavahāra, moreover is divided into eighteen kinds, according to Manu. They are : 1. the recovery of debts (ṛṇādāna), 2. deposit (nikṣepaḥ), 3. sale without ownership (asvāmivikraya), 4, concerns of several partners together (sa;mbhūya samutthānaṃ), 5. resumption of gifts (dattasyānapakarma), 6. non-payment of wages (vetanasya ādānam), 7. breach of contract (samvidaśca vyatikramaḥ), 8. rescission of sale and purchase (Krayavikryānuśaya), 9. disputes between the owner and his servants (vivādaḥ svāmipālayoḥ), 10. the laws of boundary disputes (sīmāvivādadharmaḥ), 11. assault (pāruṣya), 12. slander (daṇḍavācaka), 13. theft (steya), 14. heinous offences (sāhasa), 15. adultery or seduction (strīsaṅgrahaṇam), 16. duties of husband and wife (strīpumdharma), 17. partition (vibhāga) and 18. gambling and betting (dyūta and āhvaya). Narada is of the opinion that these vyavahāras will be multiplied into hundred fold because of the multifarious transactions of human beings.

Yājñavalkya categorically refers by the expressions 'āvedayati cet rājñe', that the plaintiff should voluntarily bring to the notice of the King but not at the instigation of the King or his servants. Generally the disputes may arise between one and many, having various causes of action. When the complaint is proper, then the defendant is to be summoned. The King should take care while summoning the defendants, there should not be any element of hurassment or other inconvinience. A person afflicted with a disease (akalpa), a minor (bala), the old (sthavira), one in difficulty (viṣamastha), one engaged in religious duty (kriyākula), one who suffers a great loss (persons engrossed in the King's service (nṛpakāryāturaḥ), intoxicated (matta) mad (unmatta), idiots (pramatta), aggrieved (ārta), a young and helpless women, a high born lady, a woman recently delivered, a maiden belonging to the highest tribe are not to be summoned. The law does not have any concessions to women upon whom others depend, profligates, prostitutes and of degraded birth. Taking into considertion the time, the place, and the importance, the King is permitted to send for such ailing and handicapped by comfortable means of conveyance. He may even summon even recluses (parivrājakas) and the like if it contributes to a sound judgement.

Arrest (āsedhaḥ) may be effected if the defendants tries to run away when the case is being taken up. Arrests are of four kinds namely - confinement in a place (sthānasedha), arrest for a limited time (kālakṛta) moments restricted (pravāsāt) and prohibition of doing a specified act (kāryāt). Any person, who is arrested, violates conditions laid down, is liable for punishment.

While the plaintiff lodges a complaint, the presence of defendant is insisted to know that what the defendant is to say in reply and this shall be taken in writing in the very presence of the complainant. Both the allegation as well as the answers, which are to be reduced to writing, should invariably consists of the particulars like the names of the plaintiff, the defendant and the year, month, fortnight, date, day, the amount, the quality, place, time, reason for forbearance and the like. If the point at issue of the complainant is denied by the defendant, the plaintiff should have written down the evidence immediately by which the matter is to be established. If the evidence is accomplished he would become success. The nonestablishment of the proof brings on the reverse i.e., defeat of the plaintiff. This is the construction.

The legal or judicial procedure (vyavahāra) consists of four parts. The first part is called the part relating to the plaintiff. The second part is the part relating to the answer of the defendant. The third part relates to evidence and proof. The fourth part contains the decision regarding the proof of the point at issue.

These are the general rules of procedure applicable to all kinds of suits brought to the notice of the ruler. (1-8)

4.3. असाधारणव्यवहारमातृकाप्रकरणम् ।।2।।

Special rules of procedure - 2

Having dealt with the general rules of procedure in the previous chapter, the special rules of procedure (asādhāraṇavyavahāra) to be applied in peculiar situations and cases are being enumerated.

When once a complaint regarding an offence is lodged with an authority by a complaintant, no counterclaim could be entertained against the complainant unless the case is disposed of. This rule is not for restricting the defendant to answer the charge against him. It means to say that no other complaint should be entertained against the person, who is already alleged to have committed the offence. Because one case might clash with the other in sequence. It is also imperative on the part of the complaint not to alter the complaint.

While dealing with general rules of procedure it was stated that whatever is alleged by the plaintiff at the time of the first complaint, the same should be censed to written down in the same manner at the time of the plaint (bhāshā). For example, having lodged a complaint first that he had given one hundred rupees as loan, he should not subsequently change the version that he had given commodity worth of hundred rupees. That is whatever he has deposed in his first complaint the same version should be taken at the time of formal complaint. In such cases the suit may not change but there would be a change in the subject matter. Such a person who effects alteration in the plaint shall be punished since he becomes the guilty of prevarication (uttering a lie) i.e., hinavādi. In short there should be a change neither in the subject matter nor in the nature of the suit.

Though the prevaricator is liable for punishment, he would not lose the suit. These restrictions are imposed to avoid mistakes for which the plaintiff or defendant may become prone and, they are applicable only in suits relating to property or title. But in disputes regarding cattle, woman, land, immovables and recovery of debts, the claim cannot be dismissed eventhough the claimant is liable to penalty. In cases of suits arising out of acts of violence and in the case of an erroneous statement, the party loses the claim. For instance, as person as having stated at the first complaint that he was kicked by the foot, if he says that he was hit by a stick at the time of deposition, he is liable for punishment and also would lose the suit. (Ī.9)

As a special rules of procedure, a counter charge should be allowed in cases of torts i.e., defamation and assault (kalaha) and feloneous crimes i.e., destruction of life by means of poisoning, murdering etc. (sāhasa) against the complainant though his own complaint is not disposed of. Though the counter-charge is not a correct answer in meeting the case of plaintiff and thus there being another complaint (pratijñā), it is impossible to go into a simultaneous proofs of both the charges. The counter-charge is meant only to abate the punishment or for avoiding it or prevent any excesses. This is the reason why, the Nāradasmṛti states that the first person, who commits a criminal offence, is guilty and deserves punishment. Even the second person, who retaliates likewise, is also guilty but does get the punishment not with such intensity as the first offender would get. If by chance both parties commit the crime simultaneously, the punishment also would be equal depending upon the gravity of the inflictment. It is obvious that such a situation does not arise in the cases of disputes on debts etc.

It is insisted that both the plaintiff and the defendant have to provide security (pratibhū). The word 'pratibhū' literally means a surity, who becomes like him (the plaintiff or the defendant as case may be) in the operation of transaction, is made to take the same responsibility as the original plaintiff or the defendant as the case may be. If a surity cannot produced, then an efficient men should be deputed for watching the plaintiff or the defendant and they alone shall pay the wages to the person deputed at the end of the day. (II.10)

If the claim alleged by the plaintiff is proved, the defendant, against whom the complaint is lodged, has to pay the amount claimed by the plaintiff and also an equal amount to the administrative authority i.e., the King as fine. If the plaintiff is unable to establish his case he will become a false claimant (mithyābhiyogi) and has to pay to the King a fine equal to the amount in dispute. According to some, this should not be considered as valid in all cases since special fines have been prescribed for special cases and it holds good only with reference to the suits regarding the recovery of debts and not to the disputes involving no money. (II-11)

As against the written complaint of a Plaintiff the parties must be summoned and asked to plead immediately in case like felocious crimes (sāhasa) thefts (steya), assault or verbal abuse etc. (pāruṣya) killing of a cow, in matters of risking life and property (atyaya), defamatory imputation (abhiśāpa) and concerning woman of high born as well as a slave girl. In other cases some time is allowed for filing an answer under the desaction of the concerned judicial authority. (II.12)

Yājñavalkya enumerates a set of people who are not fit to be either a complainant or a witness. They are : He who shifts from place to place (nomadic in nature), licks one lips (srikkinī pariledhi) whose forehead perspires, whose form becomes changed in colour, who has stammering, who has inconsistency in talk, who does not respond to the speech and who avoids the game of others, who displays in born deformity in mind, speech, body and action. The reason behind the exclusion of such persons is quite clear. (II.13-15)

It is stated that a person be declared as a false litigent (hina) and liable for punishment (daṇḍya), who tries to substantiate a dubious claim with a means of proof, who absconds after admitting the claim or absconds when he was summoned and who remain silent in the court when summoned and interrogated. It is to be remembered that the word 'hīna' implies that the case does not get dismissed just because he becomes amenable to punishment. (II-16)

Taking note of a hypothetical cases of two persons claiming the ownership of the land given to them one after the other as gifts, Yājnavalkya says that if there be witnesses for both, the witnesses for the person claiming priority should be taken first. If by chance, the first claim gets invalidated, then the witnesses of the next claimant must be examined. Priority in claiming (pūrvavādi) does not refer to the complaint lodged but has reference to the enjoyment of the gifted property at an earlier date. Supposing the gifted property is purchased by another person or the King and is presented as gift to some other person, the first claimant has no right and his case gets invalidated.

When there is a case of denial, the burden of proof rests on the plaintiff, while in a special plea it rests on the defendant. If in some cases a dispute goes with a staking (wager) then the party which loses should made to pay a fine together with the wager to the King and also the amount in dispute to the judgement-creditor. Even if betting or staking were to have been done by one person and not his counter-part and in case the former loses, he shall pay the fine and the amount staked. The other party, in case, loses he need not pay the stake amount since he was not the party for the wager. (II.18)

Setting aside all such false claims i.e., circumvention (chalam), the King should decide disputes according to the available facts : Because sometimes a real claim based on the actuality may become lost in a judicial proceedings if the presentation is defective (anupanyastam). Usually the chief judge or the councillors used to persuade the plaintiff as well as the defendant to reveal the truth. When they fail to get the truth, then the decision to examine the witnesses and other evidences used to be resorted to. Even the evidences of witnesses and documents may reveal or may not reveal the truth as there is a possibility or witnesses to deviate from the truth. (II.19)

In connection with the cases of false denial, the special rules of procedure states that if defendant is proved wrong in setting up a denial of many particulars mentioned in the written allegation made by the plaintiff and only one point is proved, the defendant is made to admit the entire claim and he should be made to pay the entire property in dispute on the basis of the logic. The logic is only as alias (the rules of probative reasoning) which says that as part of the truth in an allegation is proved, it raises the possibility of its being true in other particulars also. The plaintiff, however, is not allowed to recover from the defendant what had not been alleged in the plaint. (II.20)

Yājñavalkya following entire smṛtikāaras declare that if there were to be a mutual conflict between two smṛtis the popular usage to maintain the principles of equity shall prevail. The popular usage is the ancient usage as observed among the elders and as determined by the two tests of affirmation and negation. The established rule is that the science of law (dharmaśāstra) shall prevail over the science of politics (arthaśāstra). The meaning is that though there is no distinction between the two sciences as the authors of the both are of equal in authority, still the principal subject of treatment being law, the political science occupies only subordinate position. Moreover, the former insists upon the strict adherance to Dharma and there is no scope for a vikalpa. Vijñāneśvara brings out an example for substatiating the point that while the Arthaśāstra prefers to acquisition of a friend to that of gold or land, the Dharmaśāstra advises to be divested of anger and avarice. (II.21)

The plaintiff has to write down the evidence by means of which the matter in dispute is to be established. The evidences (pramāṇas) are of two-fold human (mānava) and divine (divya). the human evidence (mānava) consists of three kinds - viz. (1) writing (likhita;m) (2) possession (bhukti) and (3) witnesses (sākṣiṇaḥ). In the absence of these three, the ordeal is said to be another means of evidence. The ordeal may be accepted as it is drawn from the Vedic texts. Vijñāneśvara holds the view that if these evidences were to be in conflict - while one would have human evidence and the other divine, the human evidence is stronger than the ordeal. Further it is told that ordeal should not be accepted when human evidences are available. The trial of secret offenders must be held by way of ordeals where human testimony is not available. Nārada further states that the ordeal may be resorted to if the transaction were to have transpired in a forest, in a solitary place, at night or in the interior of the house and in cases of heinous faults or of denial of a deposit. Hence the ordeal is to be accepted only in the absence of human evidence. (II.22)

i. Evidence of writing

When there is evidence on both sides, that would determine the strength of the several proof is emphatically stated as follows. In all civil disputes regarding property, evidence in support of a later transaction alone prevails. In the case of a pledge, a gift, a sale, evidence in support of the earlier claim prevails. (II.23)

ii. Evidence of possession and title

In case a person remains passive without objecting to another person enjoying his land for about twenty years he loses his right over the property and with regard to the wealth such as elephant, horse etc., he loses his right after ten years only under similar circumstances. There is an exception to this provision. This does not hold good in the case of pledges (adhi), boundaries (sīmā), open deposits (upanikṣepa), wealth belonging to the mentally retarted (jaḍa), the minor (bāla), the Kings (rāja_, the women (strī) and brāhmaṇas and in the case of sealed deposits (upanidhi). The reason is obvious. The possession of a pledge is held with the stipulation of the pledge attached to it and thus there is no default by the party even if there is delay. A delay is possible in the case of dispute regarding boundary as there will be proof of permanent marks. In the case of open and ordinary deposits, use and enjoyment is prohibited and the neglect or delay is explained as the party gets the property with interest and profits. In the case of mentally retarted and minor, the delay is justifiable on account of the dullness and minority. The King cannot also be blamed for the delay because of his preoccupation with the administration of the state. In the case of women the delay is an account of ignorance, immaturity and unskilfulness. As for a brāhmaṇa delay is proper as he is engaged in studying and teaching the Vedas. If a person enjoys the pledges beyond the stipulated period even after recieving what is due to him, he shall pay the principle amount to the owner and also pay to the King a fine equal amount or according to his capacity. The fine (daṇda) is meant for subduing the arrogant or taming him down. In case, a person does not have that much money to pay the fine, he may be subjected to verbal punishment. (II 24-26)

Some kind of possession entails a person with ownership since possession was considered as an evidence of the title ownership. There is a different stand that possession cannot necessarily go with ownership. In order to clarify this divergence in view point Yajnavalkya says that title (āgama) is superior to possession excepting in the situation, where the possession has descended from a line of ancestors. Āgama means the title of ownership arising out of gift, purchase etc. and this is effective much more that possession since the latter depends upon the title. Only with the recognition of the clear title, possession becomes an evidentary value. It is to be remembered that possession can be accepted as evidence when the property has been inherited from the line of the past three succeessors. Even in the case, where possession extends beyond the memory of man, it is no evidence of ownership. Therefore it is stated that the persons, who enjoys without a title even it be for hundreds of years, the King shall inflict on that sinful being the punishment meant for a thief.

For a question whether the title could be an evidence divested of possession, Yājnavalkya says that the title would not be effective if there is no possession even for a short time. It is explained that a gift (dāna) makes one owner to disown an object and enables another to become its owner. The commencement of another's ownership is secured only when he accepts it. The acceptance is also of three-fold i.e., mental (mānasa), verbal (vācika) and physical (kāyaka).

It is stated that there are three kinds of evidence viz., writing, witness and possession. The title is superior to possession except where the possession has descended down from a line of ancestors. The title is also not effective, if there is no possession even for a short time. The point is clarified further by stating that in case of the first acquired title established by witnesses is even stronger than possession, unless there is a possession which had come down from a successive line of anectors. Such possession, in the case of fourth generation, becomes stronger than a title established by a writing. In the case of intermediary genertion, however, a title along with possession eventhough short, is effective to a title without possession. (II.27)

Refering to the fines taking into consideration the generation of the occupiers as well as the means of proof, Yajnavalkya says that he, who possesses the title, will have to prove in the court of law by producing the written document and other means of proof with regard to the title. The first possessor is liable for a fine if he fails to prove his title. His son need not prove for uninterrupted possession without protest and with notice would suffice for the ownership. No fine can be levied on him. His son (third genertion) does not require to prove the title or any other form of possession. For possession inherited itself is sufficient. It must be borne in mind that fine would be levied on the third person if he did not prove the possession handed down to him in successive line. Further this distinction holds good with regard to the levying of fine but not to the ownership of the title if not proved. (Ī.28)

Taking nose of certain situations beyond human control Yājñavalkya says that if a person were to die while a suit was filed against him, his legal heir (rikthī) should prove the title and the possession can never be considered as evidence of ownership if the title is not proved. (Ī.29)

Here is an heirarchy among the officers appointed by the King in matters of ~~legal~~ proceedings. They are mentioned as the pūgas, the śreṇis and the kulas; each preceeding shall be deemed superior in order of priority as indicated in the list. (vide the text (Block Ī) for their definitions). These three Institutions much assemble the Munisiff court, lower court and higher court. When once a decision is taken in the first of the above mentioned Institutions, there cannot be any appeal in the lower benches, but they could appeal to the officers appointed by the Kings to the courts. Vijñānesvara brings in an interesting point in this context. When a party appeals to the King in a trial with a wager before the King and his councillors with other officials i.e., pūga, śreṇi and kulas, before whom it was tried at first, if the party complaining impartially loses he must be fined. But in the case the party wins, the officers appointed as judges should be fined. (II.30)

It is stated that the suits decided by an inferior tribunal may be retired and the suits decided by the superior are not reopened in general. The transactions have been broughtout by force, are not to be considered valid. The transactions brought forth by woman at night in the interior of the house, outside or with the enemies are also declared invalid. Similarly the transaction enterred into by a person addicted to liquor, a mad man, appressed by disease, by one misery, one frightened and the like shall not be upheld. Vijñānesvara has brought out in detail various social conditions of his day's. He significantly states that the transactions entered into by woman, when her husband is ill and when man depend upon women for running the family are also got invalidated. A transaction against a servant cannot be upheld without the permission of his master he is depending on the latter. (Ī 31-32)

Yājñavalkya formulated some rules with regard to the disposition of property lost and recovered. The lost wealth that was subsequently recovered should be returned to the owner by the King. If the claimant cannot give identification of the material lost he shall be fined equal to the cost of the property. There is some stipulation of period for the claim. When Yājñavalkya prescribes a period of one year to the owner to claim his belonging, Manu stipulates a period of three years. If the owner doesnot turn up within the stipulated period, the property will be accrued by the King. But Mitakṣarakāra subscribes that if the owner appears after the period of stipulation, even when the property is disposed away, the King shall pay the remaining portion of the amount to the owner after deducting his portion. This is with reference to the gold. If it is concerned with animals or men different standards are formulated. (II.33)

Now it is the turn of Yājñavalkya to state the law with regard to the recovery of gold etc which had been buried in the land known as treasure-trove (nidhi). The King, having got at the treasure-trove, should distribute half of it to the brāhmaṇas. If the brāhmin is to find the treasure trove, he is permitted to keep it with him the entire treasure. If the treasure-trove were to be discovered by some other persons, the King should give him a sixth part of what has been found out. If the person getting at the treasure does not report it to the King or any officer, he shall be fined. Yajnavalkya, keeping in mind that the King has no existence apart from citizens, says that the King shall distribute the wealth recovered by him from the robbers to the people of his country. In case he did not do so he would incur the sin of both robbed and robbers.

4.4. ऋणादान प्रकरणम् ||3||

Recovery of Debts

The topic 'Recovery of debts' is first of the eighteen titles of law. It has seven points for consideration. While the first five points are related to the debtor, the last two points are for the creditor. They are : (1) The kind of debt should be paid, (2) Which should not be paid (3) By whom it should be paid (4) At what particular time it should be paid and (5) In what way it is to be paid, (related to debtor) (6) The mode of advancing a loan and (7) The mode of recovering it.

The interest was stipulated at the eightieth part of the principal for a month when the debt is against a pledge. In other cases it may be two, three or even five percent according to the order (varṇa) and social status of the debtor. Keeping in mind the danger encountered by the persons, who are moving through the forests and travel by seen, are to pay ten and twenty percent per month respectively. All debtors irrespective of their varṇa, should pay interest as promised by them. There may be friendly loans with no interest. The price of commodity, wages, a fine, which had been fixed, a gift without a considertion, a gambling debt, do not bear interest unless agreed to by the party concerned. The interest (vṛddhi) is of four kinds viz. Kālikā, Kāritā, Kāyikā and Cakravṛddhi. If it is payable every month it is Kālikā. When it is fixed according to agreement it is Kāritā. It is called Kāyikā, when the interest is in the form of manual labour. Interest upon interest is called compound interest Cakravṛddhi. In case of female beasts are pledged, the progeny (santati) alone is the interest and the creditor can enjoy the milk and labour during the period. The utmost limit for the accumulation of interest is eight-fold in the case of fluid (rasa), and four-fold of the principal loan advanced in the case of cloth, three-fold in the case of grains (dhānya) and two-fold in the case of gold. This is due to the nature or perishability and decay or otherwise of the commodity (II. 37-39)

The creditor's right of recovering the debt from an acknowledged debtors should be protected by the King. If the debtor complians to the King about creditor's action of recovering the debt, the King should take such a measure that the debtor should repay the loan and be punished with a fine. There are according to Manu five methods of recovering a loan advanced - 1. By moral persuation i.e., by plain and affectionate words (dharma). 2. By a suit at law involving documents and witnesses (vyavahāra) 3. By deciet i.e., by taking ornaments etc. under the pretext of some ceremonial celebrations etc. (chala) 4. By starvation i.e., by sitting at the door of debtor starving himself to death (ācaritam) and 5. the last method is by force (bala). (II.40)

When there are more than one creditor to a debtor and all these appear simultaneously for collection in what order the King should made the order of payment. Yajñavalkya says that when the creditor and debtor are of the same class the debtor should pay the creditors in the same order in which the loans were taken. If the creditors belong to different classes, the brāhmaṇa should be paid first and then the rest in order. When the creditor is competent enough to recover the acknowledged debt through any means mentioned above, he should collect the amount from the debtor along with a tenth and five percent of the principal amount to himself towards costs and to the creditor respectively as fine. An insolvent debtor of a lower class should made to work to compensate the loan. A brāhmaṇa insolvent shall be made to pay by instalments according to his ability. By any reason the creditor does not recieve the loan when repaid by the debtor and the amount is deposited with a third person, the amount will not earn any interest from that time. (II. 41-44)

A loan raised for the maintainance of a family either by the members of the undivided family - collectively or individually, is to be paid by the Head of the family. When the Head is either dead or has gone abroad, the coparceners (rikthin), who are entitled to take their share should clear the loan. If the loans are not raised for the purpose of family, a woman is not bound for her husband's or son's loan, nor a father that incurred by his son, nor a husband that incurred by his wife. It is intersting that the son shall not be made responsible for the repayment of any debt incurred by the father for consuming liquor, for lustful longing or for the sake of gambling, the balance due from a payment of fine or tax and the gifts that has been promised to a rogue, a bard, a wrestler, a quack, a liar and dancers and to thieves. But the debts incurred by the wives of a cowherd (gopa), a vintner (sauṇḍika), a dancer (śailūṣa), a washerman (rajaka), and a hunter (vyādha) should be paid by their husbands, because their livelihood depends upon them.

Previously it was stated that a wife is not bound to pay the debts incurred by her husband. But a debt agreed to by the husband who was either dying or proceeding on a journey, or agreed to either by herself individually or along with her husband, is to be repaid by herself when she has no sons. (II 45-49)

If a father, having incurred the debt, goes abroad or passes away in pecumary conditions, the debt shall be cleared by the sons and grandsons, when the transaction is established by witnesses in cases of disputes. It includes all the sons and grandsons even if they are divided. If they are undivided the one, who manages the whole family has to repay the debt. (II 50)

The person, who takes the property of another in the form of a heritage, should pay the debt incurred by the earlier owner of the property. The person, who accepts the woman of the deceased shall repay the debt. A son, when the parental estate has not gone to another, should pay the debt. The loan raised by a sonless man, is to be cleared by a man who ever takes the heritage. For the purpose of guarantee or security borthers, husband and wife, father and son are not permitted if they remain undivided. (II 51-52)

4.4. The law of surityship (prātibhāvyam)

The surity is a contract with another person with the object of creating confidence. It is of three fold : for appearance (darśana), for assurance (pratyaya) and for payment (dāna). In case of defaults on the part of the debtor, the surity or even his son is responsible for the repayment. When a surity who has given for appearance and for assurance, dies his sons need not pay the debt, but the surity, who has consented for payment, or his sons have to pay the debt. If in a transaction, there are more than two surities, then they all should divide the debt and each should pay proportionately to the share of each. As the debtor stands liable for paying the whole amount, so also the surities for payment bound jointly and severally to pay the entire amount according to wish of the creditor. If a surity has been made to pay the loan to the creditor in presence of the public, then the debtor has to be made to pay the double that amount to the surety. The amount paid to the surety by the debtor varies from one case to another. It is progeny in the case of female beasts. It is three-fold in the case of grains, four-fold in the case of cloths and eight-fold in the case of liquids. Whatever be the limit laid down for each thing, the payment should be made immediately by the debtor to the surety who has cleared the loan by himself. There shall not be any delay.

However, when a surety for appearance fails to produce the debtor as the appointed time, then a three fortnights time should be allowed to him for finding out the debtor. If he produces debtor in the stipulated period he should be released from the responsibility. Otherwise he should be made to pay the amount in dispute. (II 53-57).

4.4.2. Law of Pledges (ādhi)

In a loan transaction of money the guarantee to be offered to the creditor is two-fold viz. a surety (pratibhū) and a pledge (ādhi). Having explained the former now the latter is elucidated. The pledge (ādhi) is hypothicated by the debtor with the creditor for the sake of creating confidence for the amount borrowed. The pledge is of two kinds viz., a pledge with a time-limit (kṛtakāla) and a pledge with no time limit (akṛtakāla). It is again sub-divided into two-fold i.e., a pledge for mere custody (gopya) and a pledge for enjoyment (bhogya).

A pledge is deemed to have been forefeited if it is not redeemed by the time the principal amount is doubled in course of time with the addition of interest fixed by himself. The property of the debtor becomes the lender's own. If this were to be time stipulation (kālakṛta) it gets lost immediately after the expiry of the time and if it were to be enjoyable (bhogya) like feilds, gardens etc,. it does not lapse at any time. When a lapse occurs either on account of the rule of doubling or by the violation of the condition as to time fixed by the parties a fourteen day's waiting time should be observed.

A pledge for custody (goya) should not be used. If it is used there will be no interest. In the course of using the pledged article gets damaged there shall be no interest claimed and on the other hand the cost of the article shall be paid. In case the destruction is caused by the fate or the King, the original principal with interest or a fresh pledge should be given by the debtor.

Supposing the land is wasted out by a flood and when it is confiscated by the King, another pledge shall be given or the amount be paid to the creditor. If the pledge, despite of well protection, suffers deterioration (asāratām) and falls short of the equation with the principle amount another pledge will have to be restored failing which the principle amount with interest is to be paid by the debtor to the creditor. It must be noted that the property used for pledge shall be preserved with care and contain by the creditor.

There is an exception to the rule that a pledge lapses if doubled to the principle. There is an other pledge namely a pledge by good conduct (cāritra). Where a very valuable thing has been made over by the debtor to the creditor relying upon the good faith of the creditor and borrows a small amount, and where the creditor, relying upon the good faith of the debtor, has advanced a large amount even after taking a pledge of a small value, the King should cause to be paid with interest. A pledge of this kind does not lapse even though the amount is doubled, on the other hand the amount should be paid to the extent of the double only.

The creditor shall be declared as a thief if he does not restore to the debtor the property that was pledged. If the creditor were to be absent, the debtor may as well pay the amount to the responsible member of the family of the creditor and recieve back the pledge. The creditor is forbidden from keeping the pledge out of greed for interest even when the debtor is ready to redeem the debt. After appraising the value of the pledge, at the time of the pledge, the pledge remain there without interest. It does not carry interest thereafter till the creditor restores the pledge after taking the amount or to pay the debtor an amount equal to its value. The creditor may also sell the pledge in the presence of witnesses after the lapse of the stipulated period or the principle amount gets doubled even without expecting the debtor's presence. If in the agreement any condition is laid down, that condition shall be fulfilled.

When a debt under transaction of pledge gets doubled by the accumulated interest, then the pledge shall be returned. As it is agreed that possession of pledge was intended only for securing the interest. As the amount has increased more than the double the pledge will be used only until the payment of the original loan. In the case of the pledge intended for reduction of the interest only, the debtor shall get the pledge back after paying principle amount. In the case of mortagage meant to pay of the original principle and the interest, the debtor shall get back the pledge when the time for payment becomes matured (pūrṇakāla). If the pledge has gone beyond the limit i.e., profit becoming exceeded to the interest, then the creditor shall not get the amount and the debtor shall get back the pledge even without paying the original amount advanced by the creditor. The debtor will not get the pledge back if the pledge has not been exceeded and falling short of the interest, then even with the payment of the principle amount. Only when the balance amount is paid he shall get back the pledge. If there were to be mutual consent even if the pledge be exceeded, the creditor may enjoy it until the original amount is paid. (II 58-64)

4.5. निक्षेपप्रकरणम् उपनिधिप्रकरणम् ॥4॥

The Law of deposits

The property, which is placed in a container and delivered to a person without being described the particulars as to the quality and quantity of it is called a deposit (upanidhi). According to Narada, the undescribed property is termed as upanidhi whereas the described property is known as nikṣepa. This deposit shall be returned in the same condition in which it was handed over with the seal intact (II 65). If the deposit were to have been taken away by the King through an act, by providence or by robbers, it need not be restored. But if the loss occurs after the demand is made by the owner of the deposit, the depositary shall be fined and he shall be compelled to pay the amount equal to the deposit (II 66). If the depositary (bailee) on his own makes a living by lending the deposited amount, he should be fined and made to restore the deposit together with the interest or gains realised on it. The same law shall be applied even in the cases of yācita (ornaments or cloths etc, requested and taken away on festive occasions), anvāhita (where a thing is placed in the hands of one and by him also has been thereafter placed in the hands of another with the direction that 'please give it to the owner'), nyāsa (handing over to a member of the house in the absence of the owner and without showing it to him but with the instruction 'make it over to the owner of the house') and nikṣepa (a delivery in his very presence). (II 67)

साक्षिप्रकरणम् ॥5॥

The Witnesses

It was stated earlier that the evidence consists of three factors viz. documents (likhitam) possession (bhukti) and witnesses (sākṣi). What is the nature of a witness? The witness is he, who has actually seen or heard the thing. The witness may become appointed or unappointed. When he is marked as a witness he is said to have been appointed and when he is not marked he is reckoned as unappointed. The appointed witness is of five kinds while the unappointed witness is of six kinds. From another point of view, the witness is classified as a subscribing witness (likita), a witness who has been reminded (smarita), a casual witness (yadṛcchābhijñaḥ), a secret witness (gūḍha) and indirect witness (uttarasākṣī)

The characteristics of a competent witness are : those who is (1) devoted to religious duties (tapasvin), liberally disposed (dānasīla), born in noble family (kulina), truth speaking (satyavādi), devoted to religious observances (dharmapradhāna), straight forwardness (ṛjvaḥ), blessed with sons (putravān), and possessed of wealth (dhanānvita). They should be not less than three and should have been adherants of Śrauta and Smārta rites. Sometimes they may be choosen from the same caste or class or all from all classes. Without any differenciation (II 68-69)

Those, who are not competent to be the witnesses are women (strī), a minor (bāla), an old man (vṛddha), a rogue (kitava) an intoxicated person (matta), one infatuated (unmatta), one against whom an accusation has been brought (abhiśasta) a stage dancer (rangāvatāri), a heretic (pākhaṇḍin), a forger (kūtakṛt) one deformed (vikalendriya), a degraded (patita), a relative (āpta), one having special interest in the suit (arthasambandhi), an ally (sahāyaḥ), an enemy (ripuḥ), a thief (taskara), a desperado (sāhasi) one whose guilty is confirmed (dṛṣṭadoṣaḥ) and an out caste (nirdhūta) (II 70-71)

Earlier it was stated that the witnesses should not be less than three. But Yājñavalkya point out that with the consent of both the parties, even one witness is also enough provided he is aware of his dharma. In cases dealing with adultery, theft, insult and heinous act any person belonging to any class may serve as witness.

The witness must be made to affirm in the very presence of the plaintiff and the defendant that those, who would give false evidence, shall go to those worlds meant for sinners and meant for persons who burn properties and slay women and children. And all merits earned for hundreds of years in previous births would be lost if one utters a falsehood.

The person, who having agreed to be a witness does not give evidence at the court he is liable for punishment by the King by way of paying the entire debt to the creditor along with one tenth of the debt to the King as fine. The witness, who having known the facts, abstains himself well on time, will be treated on par with the false witness (kūṭasākṣi). He is not only a sinner but also punishable by a fine.

All the smṛtikāras are unanimous in advocating the cancellation of the judgement if it is known subsequently that it is based on the version of false witnesses. In case there were disagreement, the testimony of the majority prevail. If the witnesses are equally divided, the testimony of the virtuous shall prevail. And in case among the virtuous, there were to be disagreement, the evidence of most virtuous shall be taken as valid.

Witnesses deposing the truth of the plaint shall contribute to the success, whereas those who contradict the plaint shall be declared as defeated. If, on account of forgetfulness or for another reason, witness does not subscribe either to the affirmation or the negation of allegations of the plaint, the judgement will have to be given by adducing the other means of proof and the witnesses should not be questioned again and agian. If by chance when all evidences have been given by witnesses, some more qualified witnesses available are to depose otherwise, the first witness shall be deemed false.

A witness, who gives a false evidence by accepting a bribe, as well as the false witness shall be punished seperately with a fine double the amount in dispute. A brāhmaṇa of that nature shall be banished but not fined. Any person who gives an evidence having sworn in, hides the truth under the extraneous influence, shall pay the fine eight times. Such a brāhmaṇa, also liable for the punishment of banishment.

Where in the case, by speaking the truth either the plaintiff or the defendant is likely to suffer capital punishment, there, a refusal to give evidence is allowed and the witness is permitted to speak untruth. For purification from the sin of speaking untruth a sārasvata cāru is prescribed for a pious brāhmaṇa (II 72-83)

4.6. लेख्य प्रकरणम् ||6||

Documents

Though the evidences are enumerated in the order of likhitam, bhuktiḥ and sākṣi in the verse II.22, while explaining, the first one is taken up after dealing with the later two. The writing evidence is document (likhitam) is of two sorts viz. a śāsana (royal grant) and a janapada (executed among citizens). The janapada is of two kinds : one one's own handwriting and the other is written by other persons. The first one does not require any attestation but the second one should bear attestation by witnesses. These two are accepted as proofs having regard to the usage of the country.

Every monetary transaction that has been agreed to by a contract entered into by mutual consent, should be reduced to writing. There should be witnesses for the contract. The document should make specifically the mention of the name of the creditor, the year, the month, the fortnight, the day, the names along with the caste gotra as also other titles including the name of the father. After the entire contract has been executed in full, the debtor shall affix his signature with his own hand at the end with the statement that what.ever has been enumerated has been apprcved by one. Similarly, those persons who have been indicated as witnesses in the document, each seperately should subscribe their names preceeded by those of their fathers with tthe words that "I, so and so, am a witness to this transaction. These witnesses should be equal in number for the debtor and creditor as well. If a debtor or a witness is not literate, then the debtor through anothe person, and the witness through another witness should be attested in the presence of all. At the end, the writer (lekhaka) of the document shall sign with the statement that at the behest of both the debtor and the creditor, the document has been written by him by name so and so and the son of so and so.

If the document were to have been written by the debtor in his own hand, it is considered valid although it be without witnesses. This does not hold good if it were to have been caused by force or fraud.

A debt evidenced by document should be effective only for three generations. It means that the debt is to be paid by a borrower, his son, and the sons of that son but not by the fourth and others. A pledged property can be enjoyed by the creditor as long as the debt is not paid off whether by the fourth or fifth generations. Yājñavalkya taking into consideration certain contengential conditions states that if a document were to have been left in some other country, is illegible, is lost, robbed, stolen, torn, burnt, or cut into pieces, anothe document may be prepared with the consent of the King to represent the original document. The genuineness or a doubtful and disputed document may be established by comparing with other documents available and other writings of the party written in his own hand and by other similar means like by presumption, by confrontation of parties, by direct proof, by marks, by previous connections, by a probability of title and by inference.

The debtor shall record on the back of the document the payment made by him at different times. The creditor too endorses in his own hand for having recieved the payment.. When the entire amount is paid and thus the debt becomes redeemed the documents shall be torn or destroyed. Sometimes another document may be prepared for clearing the debt completely. It is clearly stated that if any debt is insured in the presense of witnesses, the debt shall be redeemed in the presence of those witnesses who had previously witnessed it. (II 84-94).

4.7 Self Check Questions :

1. Write the essay on the contents of Yājñavalkyasmrti?

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ಮುದ್ರಕರು : ಸಪ್ತಗಿರಿ ಪ್ರಿಂಟರ್ಸ್, ಬೆಂಗಳೂರು. 400 ಪ್ರತಿಗಳು.
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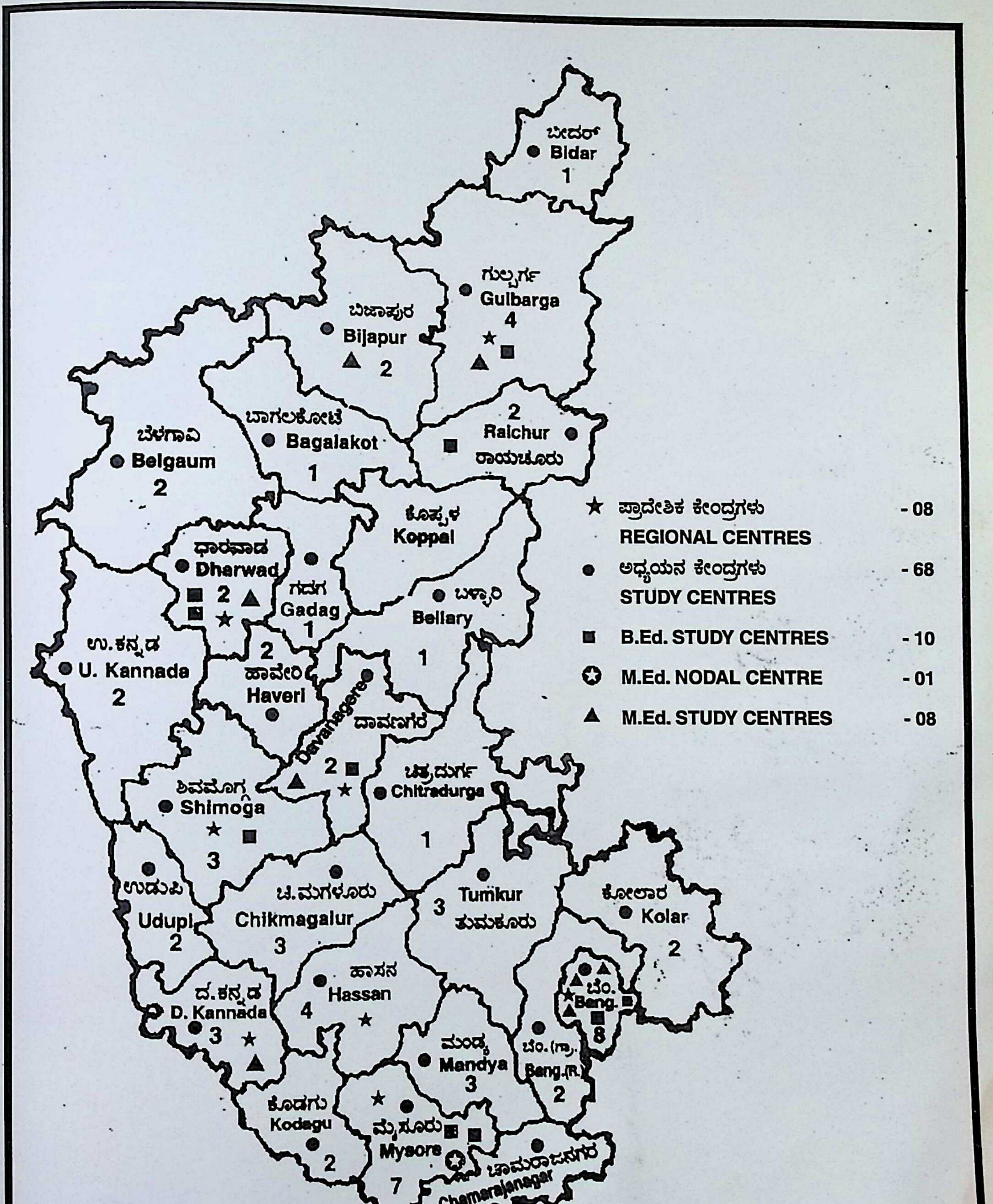
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2
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Bagalakot
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Raichur
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ಬೆಳಗಾವಿ
Belgaum
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ಕೊಪ್ಪಳ
Koppal
ಧಾರವಾಡ
Dharwad
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Gadag
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U. Kannada
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Haveri
Davanagere
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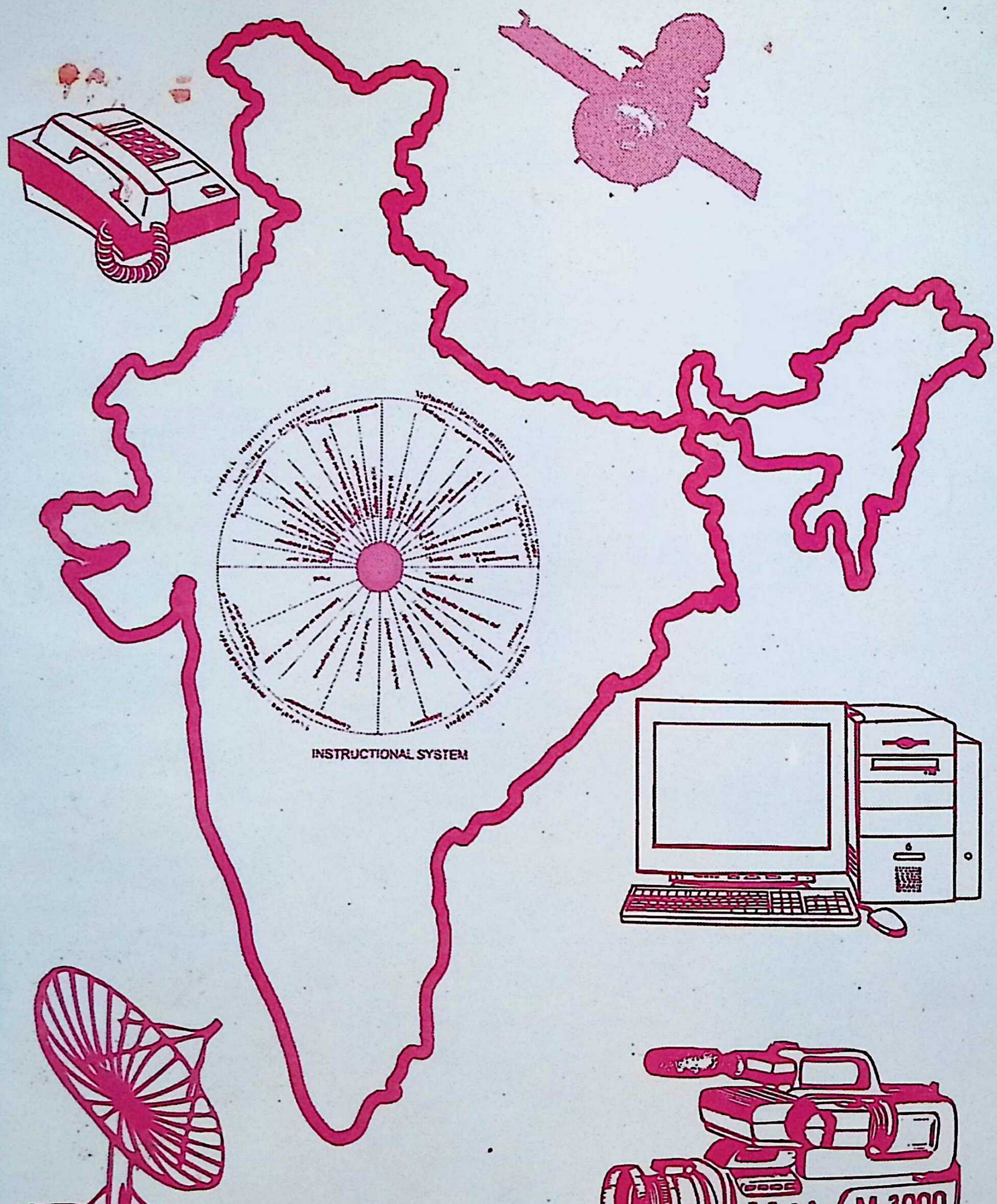
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